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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,688	11/12/2003	Gary Lee Hawk	60873	7000

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EXAMINER

CONLEY, FREDRICK C

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 09/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/706,688

Applicant(s)

HAWK ET AL.

Examiner

Fredrick C Conley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 18-20 is/are rejected.
- 7) ☒ Claim(s) 6-8, 16 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/12/03</u> | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Regarding claim 20, the word "means" is preceded by the word(s) "boom" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 9-11, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 3,104,399 to Dalton.

Claim 1, Dalton discloses a patient lifting apparatus comprising:

an upright member 36;

a boom 52 mechanically associated with said upright member for conveying a patient from one location to another; and

a support structure (12) for attaching said upright member to a bed frame, said support structure being arranged to transfer torque from the lifting

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apparatus to the bed frame during operation. With regards to the Applicant's recitation "for attaching said upright member to a bed frame and being arranged to transfer torque from the lifting apparatus to the bed frame" it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Claim 2, wherein said support structure comprises a lower attachment point.

Claim 3, wherein said support structure comprises an upper attachment point.

Claim 4, wherein said lower attachment point comprises a plurality of threaded fasteners 102 arranged to clamp the support structure to the bed frame leg.

Claim 5, wherein said support structure comprises a lower support bar that extends across the bed frame and has each of its ends fastened to a respective leg of the bed frame.

Claim 9, wherein said support structure comprises an upper bearing (58a,62a) that allows smooth rotation of the upright member relative to the bed frame, and a lower bearing (40) that transfers the vertical force of a patient's weight into the bed frame. A bearing is defined as a part supporting another machine part or structure thus the upper bearing of Dalton meets the claim limitation as recited.

Claim 10, further comprising a support arm mechanically associated with the upright member that rotates along with the boom and engages a floor to transfer the vertical force of a patient's weight into the floor (Dalton).

Claim 11, wherein said boom is pivotally mounted to said upright member for rotation about a generally horizontal axis, and further comprising a linear actuator 70 connected between said upright member and said boom for raising and lowering said boom (Dalton).

Claim 20, Dalton discloses a patient lifting apparatus, comprising:
an upright member 36 having upper and lower ends, said upright member being pivotal about a vertical axis;
a boom means 52 mechanically associated with said upright member for lifting and conveying a patient from one location to another; and
a support means 12. With regards to the Applicant's recitation "for attaching said upright member to a bed frame and being arranged to transfer torque from the lifting apparatus to the bed frame" it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 2,821,406 to Hoyer et al. in view of U.S. Pat. No. 1,269,734 to Noland.

Claim 1, Hoyer discloses a patient lifting apparatus comprising:

an upright member 20;

a boom 27 mechanically associated with said upright member for conveying a patient from one location to another. Dalton fails to disclose a support structure for attaching said upright member to a bed frame. Noland discloses a support structure for attaching said upright member to a bed frame (col. 4 lines 78-81). It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a support structure as taught by Noland with the lifting apparatus of Hoyer in order to move a patient from a bedstead.

Claim 2, wherein said support structure comprises a lower attachment point (col. 4 lines 92-100).

Claim 3, wherein said support structure comprises an upper attachment point 48 that is capable of fastening to a headboard of the bed frame.

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Claim 4, wherein said lower attachment point comprises a plurality of threaded fasteners 58 arranged to clamp the support structure to the bed frame leg.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 3,104,399 to Dalton in view of U.S. Pat. No. 4,571,758 to Samuelsson.

Claim 12, Dalton discloses all of the Applicant's limitations wherein said upright member is pivotal about a vertical axis. Dalton fails to disclose an actuator for rotating the upright member. Samuelsson discloses a patient lifter comprising an actuator 27 for rotating an upright member about said vertical axis to swing a boom in a side-to-side movement. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ an actuator as taught by Samuelsson with the patient lifter of Dalton in order to provide a motorized means for rotating the upright member.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 3,104,399 to Dalton in view of U.S. Pat. No. 5,651,149 to Garman.

Claim 13, Dalton discloses all of the Applicant's claimed limitations wherein said boom is rigidly mounted to said upright member. Dalton fails to disclose a winch and cable. Garman discloses a patient lifting apparatus comprising a winch 10 having a cable 15 that hangs from a free end of a boom. It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a winch and cable as taught by Garman with the patient lifter of Dalton in order to raise and lower the patient.

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Claims 14-15 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 3,104,399 to Dalton in view of U.S. Pat. No. 1,269,734 to Noland.

Claim 14, Dalton discloses a patient lifting apparatus comprising:
an upright member 36;
a boom 52 mechanically associated with said upright member for conveying a patient from one location to another; and
a support structure (12) for attaching said upright member to a bed frame, said support structure being arranged to transfer torque from the lifting apparatus to the bed frame during operation. Dalton fails to disclose a bed frame comprising a plurality of legs and a headboard wherein the support structure is secured to one of the legs. Noland discloses a support structure for attaching said upright member to the legs of a bed frame (col. 4 lines 78-81). It would have been obvious to one having ordinary skill in the art at the time of the invention to employ secure the support structure of Dalton to legs of a bed frame as taught by Noland in order to move a patient from a bedstead.

Claim 15, wherein said lower attachment system of the support structure comprises a lower support bar 98 that extends across the bed frame and has each of its ends fastened to a respective leg of the bed frame (Dalton).

Claim 18, wherein said support structure comprises an upper bearing (58a,62a) that allows smooth rotation of the upright member relative to the bed frame, and a lower bearing (40) that transfers the vertical force of a patient's weight into the bed frame. A

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bearing is defined as a part supporting another machine part or structure thus the upper bearing of Dalton meets the claim limitation as recited.

Claim 19, further comprising a support arm mechanically associated with the upright member that rotates along with the boom and engages a floor to transfer the vertical force of a patient's weight into the floor (Dalton).

Allowable Subject Matter

Claims 6-8 and 16-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fredrick C Conley whose telephone number is 308-7468. The examiner can normally be reached on m-th m-fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FC



MICHAEL F. TRETTEL
PRIMARY EXAMINER
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